IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

GLORIA S. JACKSON,   )
)
     Plaintiff,   )
)
VS.   )   No. 15-2774-JDT-tmp
)
DIANE K. VESCOVO,   )
)
     Defendant.   )

ORDER TO MODIFY THE DOCKET, DENYING PLAINTIFF'S OBJECTIONS, ADOPTING REPORT AND RECOMMENDATION TO DISMISS CASE, CERTIFYING AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

On November 30, 2015, Plaintiff Gloria S. Jackson, who is currently incarcerated at

the DeSoto County Detention Center in Hernando, Mississippi,[1] filed a *pro se* complaint on

the form used for commencing actions pursuant to 42 U.S.C. § 1983, accompanied by a

motion to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) United States Magistrate Judge Tu

M. Pham granted leave to proceed *in forma pauperis* on January 27, 2016. (ECF No. 4.)

Also on January 27, 2016, Magistrate Judge Pham issued a Report and Recommendation

("R&R") in which he recommended dismissing the case *sua sponte* pursuant to 28 U.S.C.

§ 1915(e)(2). (ECF No. 5.) Plaintiff filed a document with several attached exhibits on

February 4, 2016, which the Court construes as timely objections to the R&R. (ECF No. 6.)

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[1] Plaintiff was not incarcerated when the complaint was filed.

Plaintiff has sued Diane K. Vescovo, Chief Magistrate Judge of the United States District Court for the Western District of Tennessee. As Magistrate Judge Pham noted, although Plaintiff filed her complaint on the § 1983 form, individual capacity claims against federal employees or officials must be brought under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Therefore, this case arises under *Bivens*.[2]

Magistrate Judge Pham noted in the R&R that Plaintiff's claims in this case concern allegedly biased rulings and actions taken by Magistrate Judge Vescovo in two prior cases filed by Plaintiff in this district, *Jackson v. City of Memphis*, No. 10-2856-SHM-dkv (W.D. Tenn. filed Nov. 12, 2010) and *Jackson v. City of Memphis*, No. 15-2313-SHM-dkv (W.D. Tenn. filed May 11, 2015). He found that all of the rulings and actions complained of were judicial in nature, taken by Magistrate Judge Vescovo in her role as a judicial officer and within the subject matter jurisdiction of this Court. Therefore, Magistrate Judge Pham concluded that Magistrate Judge Vescovo is entitled to absolute judicial immunity in this case. *See Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (per curiam); *Stump v. Sparkman*, 435 U.S. 349, 359-60 (1978); *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967); *Bright v. Gallia Cnty., Ohio,* 753 F.3d 639, 648-49 (6th Cir. 2014); *Leech v. DeWeese,* 689 F.3d 538, 542 (6th Cir. 2012).

Plaintiff's objections to the R&R do not specifically address Magistrate Pham's determination that her claims against Magistrate Judge Vescovo are barred by judicial

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[2] The Clerk is directed to MODIFY the docket to reflect that this is a *Bivens* action.

immunity. Instead, Plaintiff has merely reiterated her allegations of bias and attached several exhibits which she contends are proof of that bias. Nothing in the objections convinces the Court that Plaintiff's allegations are sufficient to state a claim on which relief may be granted.

Plaintiff's objections to the R&R are DENIED. Because Magistrate Judge Pham's conclusions are sound, the Court ADOPTS the R&R and DISMISSES this case pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)-(iii) for failure to state a claim on which relief may be granted and on the basis of judicial immunity.

Pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rule of Appellate Procedure 24(a), the Court CERTIFIES that an appeal by Plaintiff would not be taken in good faith and DENIES leave to appeal *in forma pauperis*. Accordingly, if Petitioner files a notice of appeal, she must also pay the entire $505 appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals.

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

 s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE